Supreme Court, U.S.
FILED
JAN 13 1993
OFFICE OF THE CLERK

No. 92-824

In The

Supreme Court Of The United States

OCTOBER TERM, 1992

GREAT DANE TRAILERS, INC.,
Petitioner,

v.

RONALD RUFFIN,
Respondent.

ON A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. When the plaintiff is found to be the victim of a racially hostile work environment in violation of Title VII and the defendant is enjoined to correct that hostile environment, has the plaintiff prevailed for purposes of attorney's fees and expenses?

2. Where the plaintiff reverses the district court's holding that he was not a prevailing party under 42 U.S.C. § 1988 and the case is remanded for a hearing on the issue of fees to the district court, does *Farrar v. Hobby*, 61 USLW 4033 (1992) require a different outcome?

LIST OF PARTIESS

The parties to this case in the Courtrt of Appeals were as follows:

Ronald Ruffin

Great Dane Trailers, Inc.

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OPINIONS BELOW:

The Eleventh Circuit Opinion is reported *Ruffin v. Great Dane Trailers*, 969 F.2d 989 (11th Cir. 1992). The district court's denial of attorney's fees and expenses which was reversed by the Eleventh Circuit is found in Appendix A-35 - A-36. The district court's findings of fact and conclusions of law dictated into the record are found at Appendix A-8 - A-34.

STATEMENT OF THE CASE

The Eleventh Circuit reversed the district court's holding that the plaintiff was not a prevailing party under 42 U.S.C. § 1988. After trial of the plaintiff's Title VII claims, the district court had found that the defendant violated Title VII of the Civil Rights Act of 1964 by maintaining a racially hostile work environment. Tr. 411-413. A permanent injunction was entered which ordered the defendant "to take appropriate steps to create a work environment at its shop in Birmingham, Alabama, that will not be racially offensive to its black employees, and more particularly that the defendant take appropriate steps to assure that its employees at such job site cease using racial slurs, epithets, slang, and jokes that might be reasonably expected to be offensive to its black employees". R.1-38; Tr. 413-414. A declaratory judgment was also awarded. Tr. 413.

The district court, however, denied attorneys' fees and expenses because he had "won on no central or major or significant issue being presented". Tr. 414. Besides the challenge to the racially hostile work environment, the plaintiff claimed that the racially hostile work environment constituted the chief basis for challenging the lower pay, work assignments and discipline received as racially discriminatory. Tr. 400-401, 410-411. They were alleged to have been caused by, or closely related to, the racially hostile work environment. Tr. 400-401, 410-411. The trial court agreed that the other claims of racial discrimination had to be decided in the context of the racially hostile work

environment which was found to exist. Tr. 410-411, 398, 401. The trial court found these to be difficult issues, but ultimately ruled against the plaintiff on his three claims regarding pay, discipline and work assignments. Tr. 400-401, 413. As a result, the court held that the plaintiff was not a prevailing party for fee purposes because he prevailed on only one of his four claims. Tr. 414.

The Eleventh Circuit Court of Appeals in reversing the trial court, held that the plaintiff was a prevailing party and that he had achieved more than a bare declaration that his rights had been violated. The plaintiff had clearly sought the injunction that he obtained. *Ruffin v. Great Dane Trailers*, 969 F.2d 989, 993 (11th Cir. 1992). Great Dane pursuant to the injunction was required to be more aggressive in providing black workers with a racially neutral work environment. The Court of Appeals stated that by virtue of the injunction, there had been a change in the legal relationship of the parties, because Great Dane was under a legal obligation to protect Mr. Ruffin from racist behavior on the job and if it did not, was subject to civil contempt proceedings by him. The Court held that under *Texas State Teachers v. Garland Independent School Dist.*, 109 S.Ct. 1486 (1989) the plaintiff was a prevailing party and reversed the district court with instructions to hold an evidentiary hearing on plaintiff's entitlement to fees.

STATEMENT OF THE FACTS

In December, 1987, when Ronald Ruffin, black, opened his toolbox after lunch, he found a hangman's noose there. Tr. at 8. When this occurred, five white workers sitting at the parts counter began grinning and laughing. Tr. at 7-8. One of them at the counter was Roger Harris. Tr. at 8. When Ronald Ruffin brought the hangman's noose to Roger Harris, **Harris took the hangman's noose and put it around Mr. Ruffin's neck and told him that "we would just hang us a nigger"**, referring specifically to Ronald Ruffin. Tr. at 206, 214. Mark Gallups and Roger

Harris had been playing with the hangman's noose. Tr. at 206. The district court found that it was prepared of heavy rope and was put around Mr. Ruffin's neck by the white mechanic. Tr. at 353, 8, 409. Roger Harris, called by the defendant to testify, admitted that prior to the day that he put the hangman's noose around Mr. Ruffin's neck he had in the past used the word "nigger" directed to Mr. Ruffin. Tr. at 215. He had also called Mr. Ruffin a "porch monkey", although he characterized this as "joking". Tr. at 208.

Racial slurs and a racially charged environment were typical at the Birmingham Great Dane facility. Dennis Harris, white, a former mechanic for nine and one half years at Great Dane left about a year and a half before the trial. [1] Tr. at 343. He went to the Keebler Company for an increase in pay and better work. Tr. at 343. He stated it was very common to hear racial remarks at breaks when everybody gathered around the parts counter and had their snacks. Tr. at 352. It was common for a lot of mechanics to make racial statements, including the term "nigger". Tr. at 344. He testified that Roger Harris frequently used the word "nigger" and four other mechanics also used that term. Tr. at 344. The district court found this to be true. It held the various mechanics, most of whom were white, engaged on a regular basis in making racially tainted jokes, slurs and epithets. Tr. at 407.

Dennis Harris stated that many of those statements were said in front of management of Great Dane. Tr. at 344. This included statements made in front of Mike Willoughby, the shop foreman, and also in front of the leadmen, Mark Perry and Will Webb. Tr. at 345. Some of those statements Dennis Harris heard were said

[1] Dennis Harris had good skills according to Ronnie Woods, the service manager, and had always done a good job. Tr. at 267. Ronnie Woods testified that Dennis Harris had no reprimands nor any type of discipline. Tr. at 267. Dennis Harris had no "axes to grind" against the company or reason to alter his testimony.

when Mike Willoughby was sitting as close as next to the people making the statements. Tr. at 345. At no time did Dennis Harris see him take any disciplinary actions for those statements. Tr. at 345. In fact, Mr. Harris had heard Willoughby use the word "nigger" concerning mechanics that worked there. Tr. at 345. This included statements such as "that nigger is taking too much time or he's slow or he don't know what he's doing." Tr. at 345. Some of those comments Willoughby made were referring to Mr. Ruffin. Tr. at 346.

Mr. Ruffin testified that Mike Willoughby had been within hearing when Sam Logan called him a "nigger". Tr. at 100. On one occasion Sam Logan told Mr. Ruffin to "hurry up, nigger" in the presence of Mike Willoughby, shop foreman. Tr. at 11. Mr. Willoughby never took any action aginst Mr. Logan for his racial statement. Tr. at 12. Mr. Logan frequently made racial statements to Mr. Ruffin such as calling him a "nigger", the most recent one occurring three months prior to trial. Tr. at 12, 81. On another occasion approximately two years earlier, Will Webb, a lead man, hit the back of the trailer driven by Mr. Ruffin with a sledgehammer and said "Nigger, I didn't tell you to put it over here." Tr. at 12-13. Mr. Ruffin had reported to Ronnie Woods, the shop foreman, that he was being called names that he considered racial, including "nigger". Tr. at 14. Woods told him that he would look into it. Tr. at 14. The racial slurs and epithets, however, never stopped.

Prior to the hangman's noose being put in his tool box, Mr. Ruffin was assigned to clean out a wrecked trailer. While cleaning out wrecked trailers was a part of the job of a mechanic, this was not any ordinary trailer. He was assigned to clean out a truck of busted watermelons which was full of maggots. Tr. at 15, 17, 224. Given the other racial slurs he had heard, the significance of that particular assignment was not lost on him. Beforehand, either Roger Harris or Mike Willoughby, the shop foreman, said

"that looks like a job for Rondo", meaning Mr. Ruffin. Tr. at 15. Mr. Willoughby was approximately four feet away from Roger Harris. Tr. at 99. When Mr. Ruffin told them that he did not think that was so, they told him to clean it out. Tr. at 16. When Mr. Ruffin reported to Mike Willoughby that the trailer had maggots from busted watermelons and asked for a helper to be assigned to assist him, no one was assigned to help him. Tr. at 17, 99. All of the helpers at that time were white. Tr. at 17.

Management had been on notice that employees were making racial slurs to the black employees. Hosey Abner, a black former employee, testified that Roger Harris, Sam Logan, and David Smith, co-workers, used racial slurs such as "nigger" around Mr. Abner. Tr. at 108-109. These were made by them in front of Willoughby, Will Webb and also Ronnie Woods. Tr. at 110-111. This was before November of 1987. Tr. at 114. Troy Smith, black, testified that he was employed there from January 1990 for six or seven months as a helper. On one occasion Will Webb hit his finger with a hammer that Mr. Smith had gotten for him. He was called "boy" and told that was not the big hammer Webb had wanted him to get. Tr.at 122. Mr. Smith talked to Mr. Webb about using the term "boy" and that if he used the term again Mr. Smith would physically hit him. Tr. at 123, 135. It ended in a physical confrontation with both employees being suspended two and a half days. Tr. at 123, 191.

When Mr. Smith made the statement that he would hit Webb if he continued to use that language with him, Will Webb said, "that's all he needed and I was out of here." Tr. at 123. After that incident, Troy Smith testified that it was not the same at Great Dane. He started being drug tested and harassed by Will Webb. Tr. at 124. Mr. Smith testified that while he was on jobs, he would be sent to help another employee and told not to clock out on the job ticket. Later, he would be called to the office to discuss why he was over the goal hours on the job. Tr. at 129. After the

incident with Will Webb, Ronnie Woods called Mr. Smith into the office and told him that he needed to see a drastic change in his performance. Tr. at 124. Given the circumstances of the situation and the fact that he kept being pulled off of jobs so that he could not learn them, Mr. Smith resigned rather than be fired. Mr. Smith also heard racial slurs while he was there. Roger Harris used the term "black boy" during the course of the day. Tr. at 125. This would be said to him around Mike Willoughby, the shop foreman. Tr. at 125. Since it occurred early in the morning before the shift started, there was no noise that would have made it difficult to hear. Tr. at 137. Mr. Willoughby, however, took no corrective action. Tr. at 125. Billy Eaton and Sam Logan would use the term "nigger." Tr. at 125. Lee Bell also testified that Roger Harris also made a number of jokes that related to blacks and whites which were of a racial nature. Tr. at 204.

Mr. Ruffin described the effect the racial slurs and incidents had on him as a "sort of mental thing." Tr. 42. It made him think a lot about the job and also caused him to sometimes feel like he did not want to go in to work and suffer their abuse. Tr. at 42. When Mr. Ruffin arrived at work in the morning he would sit in his car, because he did not want to hear the jokes that were made. Tr. at 42.

The district court found that Mr. Ruffin was offended by those jokes, slurs and epithets and certainly had a basis for being offended. Tr. at 407. The district court found that the company did not provide a sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work. Tr. at 413. It entered a declaratory judgment that Mr. Ruffin's right to work free from a racially hostile environment had been violated. Tr. at 413. The district court also found that the company's efforts had been ineffective to adequately correct the hostile environment.

The district court found that the issue of pay increases and the resulting promotion was related to the use of racial slurs, jokes, and incidents. Tr. at 401. The district court found these to be the more difficult issues before the court. Tr. at 400. It found that an aspect that was most difficult for the court to deal with was whether the racially hostile environment contributed to or caused the inadequacies in performance resulting in a failure to get pay increases. Tr. at 411. The district court, however, ruled against the plaintiff on the pay increase – promotion claim. Tr. at 412. It also ruled against Mr. Ruffin on his disparate discipline and work assignments claims.

The district court entered a declaratory judgment that the defendant had violated Title VII by its hostile racial environment. Tr. at 413. It entered an injunction for the defendant to take appropriate steps so that the work environment was not racially offensive. Tr. at 413-414. However, the district court denied attorneys fees and expenses. Tr. at 413.

ARGUMENT

I. PLAINTIFF WAS A PREVAILING PARTY UNDER THE STANDARD IN *GARLAND*

From the very outset of the plaintiff's complaint that he was subjected to a racially hostile work environment, Great Dane denied the existence of a racially hostile environment. "Defendant denies that Plaintiff has suffered racial slurs and derogatory actions from coworkers." Answer, ¶ 9. This Court held that "[i]f the plaintiff has succeeded on 'any significant issue in litigation which achieved some of the benefit the parties sought in bringing suit' the plaintiff has crossed the threshold to a fee award of some kind". *Texas State Teachers v. Garland Ind. Sch. District*, 109 S.Ct. 1486, 1493 (1989). This Court further held that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute". *Id.* This Court

explained that "[w]here such a change has occurred, the degree of the plaintiff's overall success goes to the reasonableness of the award under *Hensley*, not to the availability of a fee award *vel non*". *Id.* Stated another way, "the degree of the plaintiff's success in relation to the other goals of the lawsuit is a factor critical to the determination of the size of a reasonable fee, not to eligibility for a fee award at all". *Id.* at 1492. This Court expressly rejected any comparative assessment of which form of relief is more important, primary or central to the action, reasoning that:

> By focusing on the subjective importance of an issue to the litigants, it asks a question which is almost impossible to answer. Is the "primary relief sought" in a disparate treatment action under Title VII reinstatement, back-pay, or injunctive relief? This question, the answer to which appears to depend largely on the mental state of the parties, is wholly irrelevant to the purposes behind the fee shifting provisions, and promises to mire district courts entertaining fee applications in an inquiry which one commentator has described as "excruciating". Creating such an unstable threshold to fee eligibility is sure to provoke prolonged litigation, thus deterring settlement of fee disputes and ensuring that the fee application will spawn a second litigation of significant dimension. In sum, the search for the "central" and "tangential" issues in the lawsuit, or for the "primary" as opposed to the "secondary" relief sought, much like the search for the Golden Fleece, distracts the district court from the primary purposes behind § 1988 and is essentially unhelpful in defining the term "prevailing party" *Id.* at 1493.

The plaintiff clearly satisfied the foregoing standard for prevailing party status. The plaintiff gained the injunction and

declaratory judgment which he sought in n his complaint.
R.1, p. 4.

II. PLAINTIFFS WHO C OBTAIN INJUNCTIVE RELIEF ARE E NTITLED TO FEES AND EXPENSES UNDER 42 U.S.C. § 1988

At the time this case went to trial, Tit tle VII did not provide a means for recovering compensatory or r punitive damages for being subjected to a racially hostile envir onment, nor did Section 1981. *Patterson v. McLean Trucking*, 10 9 S.Ct. 2363 (1989); *cf.*, *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515 (11th Cir. 1991). Declaratory and injunctive relief were the only remedies available to the plaintiff to stop incidents consti tuting a racially hostile environment, such as the hangman's n noose being put in his toolbox; placed around his neck; and be eing subjected to racial slurs. This Court has directly held that a n injunction without an accompanying monetary judgment is su fficient to become the prevailing party and have fees awarded. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415, 95 S.Ct. 2362, 2370, 45 L.Ed.2d 280 (1975). The Court reiterated in *Albemarle Paper Co.* that "the great public interest in having unction actions brought could be vindicated only if successful plaintiffs acting as 'private attorneys' general' were awarded attorneys' fees in all but very unusual circumstances". *Id.* 422 U.S. at 415.

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[2] As this Court held in *Albemarle Paper Co.*, *supra*, remedies in Title VII cases "should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination". *Albemarle*, 422 U.S. at 412, 95 S.Ct. at 2371. The Court rejected a "regime of discretion that produces different results for breaches of duty in situations that cannot be differentiated in policy". *Id.* 422 U.S. at 417, 95 S.Ct. at 2371. That would be the result if fees were not awarded where a Judgment of racial harassment is entered along with an injunction.

The plaintiff's situation here is typical of all racial harassment claims.[2] Denial of fees to this plaintiff for achieving an injunction against a racially hostile work environment will mean that such claims cannot be prosecuted on a contingent fee basis and plaintiffs will be unable to attract counsel to undertake such claims. This is exactly what this Court warned against when it held in *Albemarle Paper* and *Newman v. Piggie Park* that injunctive relief is enough to make the plaintiff's counsel eligible for a fee. In *Albemarle Paper* this Court held that "the strong public interest in having injunctive actions brought under Title VII to eradicate discriminatory employment practices ... can be vindicated by applying the *Piggie Park* standard to the attorney's fees provision of Title VII". *Id.* The *Piggie Park* standard on attorney's fees requires fees where no monetary remedies are achieved or available because a plaintiff who "obtains an injunction does so not for himself alone, but also as 'a private attorney general' vindicating a policy that Congress considered of the highest priority". *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, 88 S.Ct. 964, 966 (1968).[3] This Court also held that:

> If successful plaintiffs were routinely forced to bear their own attorney's fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees -- not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II. *Id.*

See also, *Sanchez v. City of Miami Beach*, 720 F. Supp. 974, 983 (S.D. Fla. 1989) (Court held that the "[p]laintiff succeeded on the

[3] Even the entry of a formal injunction, however, is not always required as a predicate to becoming a prevailing party for fee purposes. Once a plaintiff prevails on the merits through a jury verdict it does not matter whether formal relief is entered or awarded. (continued)

central issue in the suit, establishing that there exists a violation of the Civil Rights Act of 1964").

The Court of Appeals found under the *Garland* test that Mr. Ruffin prevailed, because the actual relief on the merits of his hostile racial work environment claim materially altered the legal relationship between the parties in a way that directed benefitted him. First, the defendant who previously denied there was a racially hostile environment pursuant to the injunction was **required** to be more aggressive in providing black workers with a racially neutral environment. *Ruffin*, 969 F.2d at 993. The Court of Appeals found that this undoubtedly affected Great Dane's behavior toward Mr. Ruffin. *Id.* Furthermore, Great Dane as a

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In *Maher v. Gagne*, 448 U.S. 122, 129, 100 S.Ct. 2570, 2575, 65 L.Ed.2d 653 (1980), this point was made in holding that "[n]othing in the language of § 1988 conditions the District Court's power to award fees ... on a judicial determination that the plaintiff's rights have been violated". *Id.* This Court found that the Congressional history "expressly stated that 'for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights ... without formally obtaining relief". *Id.* 448 U.S. at 129 [quoting S. Rep. #94-1011, p. 5 (1976), U. S. Code Cong. & Admin. News 1976, pp. 5508, 5512]. In *Hewitt v. Helms*, 107 S.Ct. 2672, 2676 (1987), this Court held that "[i]t is settled law, of course, that relief need not be judicially decreed in order to justify a fee award". *Dunn v. State of Florida*, 889 F.2d 1010, 1013 (11th Cir. 1989), reiterated what the former Fifth Circuit had earlier concluded:

> The Act's legislative history evinces a clear Congressional intent to award attorney's fees even when no formal judicial relief is obtained and no final judicial determination is made on any constitutional claim. The Senate Report explains that "parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief". *Id.* (emphasis supplied) [quoting *Robinson v. Kimbrough*, 652 F.2d 458, 465 (5th Cir. 1980)].

result of the injunction was required to correct the racist behavior at its jobsite. *Id.* Mr. Ruffin as a result of the lawsuit could protect his rights through a civil contempt proceeding if Great Dane did not comply with the injunction. *Id.*

An injunction against the racially hostile work environment in which he was required to work was one of the central remedies, if not the central one sought in the original Complaint. In three paragraphs of the Prayer for Relief in the Complaint, two of them request the very declaratory and injunctive relief that was awarded. R.1-1, p. 4. The Prayer for Relief in the Complaint reads as follows:

> IV. PRAYER FOR RELIEF
>
> WHEREFORE, the plaintiff respectfully prays that this Court assume jurisdiction of this action and after trial:
>
> 1 Issue a declaratory judgment that the employment policies, practices, procedures, conditions and customs of the defendant are violative of the rights of the plaintiff as secured by Title VII of the Act of Congress known as the "Civil Rights Act of 1964", as amended, 42 U.S.C. Section 2000e et seq.
>
> 2. Grant plaintiff a permanent injunction enjoining the defendant, its agents, successors, employees, attorneys and those acting in concert with the defendant and at the defendant's request from continuing to violate and Title VII of the Act of Congress known as the "Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq.
>
> 3. Enter an Order requiring the defendant to make the plaintiff whole by awarding him the position he would have had occupied in the absence of race discrimination, back-pay (plus interest), compensatory damages, lost seniority, benefits and loss of pension.

The plaintiff won the relief sought in paragraphs 1 and 2 of his Prayer for Relief. It is impossible to say that such relief is unimportant or "insignificant" without making a mockery of Title VII.

The Complaint also specifically alleges that monetary relief is inadequate to make the plaintiff whole and that injunctive and declaratory relief is a necessary remedy. R.1-1, p.3. In paragraph 12 of the Complaint it states that:

> 12. The plaintiff has no plain, adequate, or complete remedy at law to redress the wrongs alleged herein and this suit for ... an injunctive and declaratory judgment is his only means of securing adequate relief. The plaintiff is now suffering and will continue to suffer irreparable injury from the defendant's unlawful policies and practices as set forth herein unless enjoined by this Court. R.1-1, p. 3.

The findings below also make clear that the racial harassment claim was the essential premise of the challenge of plaintiff's pay, discipline and work assignments. Tr. 397, 400-401, 410-412. The trial court recognized that these other claims were largely driven by the racial harassment claim. For example, in regard to the discriminatory pay claim the district court recognized in its findings that it was "related" to the harassment claim, because in order to resolve it the court had to determine whether the performance deficiencies articulated as the reason for the denial of pay raises were caused by the racial harassment. Tr. 410-411, 401. The trial court held that "one of the aspects that is most difficult for the court to deal with here is a determination as to whether this racially hostile environment ... contributed to or caused the inadequacies in performance which in turn have resulted in the failure to get pay raises". Tr. 410-411. Although the court eventually decided that the racial harassment did not cause the performance problems articulated as the basis for the denial of a

pay increase, the necessity of deciding that issue as a part of the pay claim demonstrated that the racial harassment was not only important in its own right as an independent cause of action, but was also important as a part of the proof of the other causes of action.

In order to prove the violation of Title VII for a racially hostile work environment which the district court found to exist, the plaintiff had to prove that the harassment was "sufficiently severe and persistent to affect seriously the psychological well being of employees". *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982). The plaintiff carried this burden, which is not an easy thing to do. Once such "severe and persistent" harassment is proven to "seriously affect the psychological well being" of the plaintiff, an injunction is necessary to end the harassment and to allow the plaintiff to work in a racially neutral environment. The Court of Appeals stated the fact that the court mandated the implementation of procedures that would ensure against the reoccurrence of violations was not negated by no monetary relief being ordered. *Id.* at 994. The defendant had refused to concede that a racially hostile work environment existed and that its actions had been inadequate. A court resolution was required to settle that dispute. The plaintiff was clearly the prevailing party, because the court declaration that the defendant violated Title VII by having such hostile work environment necessarily changed the legal relationship between the parties. It foreclosed the defendant's denial of the existence of such racial harassment and the injunction enjoined it to take "appropriate steps" in the future "to create a work environment that will not be racially offensive". R.1-38.

III. INJUNCTIVE RELIEF IS NOT NOMINAL RELIEF, BUT RATHER SERVES THE REMEDIAL PURPOSES OF TITLE VII

The defendant argues this to be an unimportant or nominal injunction. This reveals its contempt for Title VII and the injunction that was entered. Such a finding and injunction is not merely technical, de minimis or unimportant. "The language of Title VII is not limited to 'economic' or 'tangible' discrimination." *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 106 S.Ct. 2399, 2404-05, 91 L.Ed. 49 (1986). "Title VII affords employees the right to work in an environment free from discriminatory intimidation, ridicule and insult." *Id.* at 65, 106 S.Ct. 2406. The injunction against racial harassment and the order "to take appropriate steps to create a work environment that will not be racially offensive" necessarily created a "material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute". *Garland, supra*, 109 S.Ct. at 1493.

The primary objective of Title VII was a prophylactic one:

> "It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of employees over other employees." *Albemarle, supra*, 422 U.S. at 417, 95 S.Ct. 2371 (quoting *Griggs v. Duke Power Co.*, 401 U.S. at 429-430, 91 S.Ct. at 853).

Injunctive relief is a primary tool to eradicate illegal hostile working environments. To characterize such relief as insignificant is tantamount to a callous disregard toward such things. An end to such harassment and a guarantee against its recurrence was the "central issue" and the primary relief sought in the action. Indeed, in most harassment claims it is the only relief possible. *Bundy v. Jackson*, 641 F.2d 934, 946 n.12 (D.C. Cir. 1981).

After having Great Dane's denial of racial harassment or a violation of Title VII rejected by the court below, the legal relationship of the parties was necessarily changed in the manner intended by Congress. The defendant contended below that its conduct did not violate Title VII and has now been told that it does so in a definitive manner. That is exactly the purpose intended by Congress in allowing litigation of such claims. Without such litigation, companies would be free to pretend, as this defendant did, that nothing more than a pro forma approach to racially hostile environment is all that is required in response to severe and persistent harassment. The declaratory judgment and injunction serve the important corrective function of rejecting that view and telling this defendant, and others, that the Act is violated when they knew or should have known of the harassment and fail to take meaningful remedial action. Paying the fees and expenses for resolving such disputes is the "spur or catalyst which causes employers and unions to self - examine and to self - evaluate their employment practices and to endeavor to eliminate" such practices which will not be done without the risk of incurring such fees and expenses. *cf. Albemarle Paper Company,* 422 U.S. at 417-418, 95 S.Ct. 2371 -2372.

Defendant's argument that it would have been put to the cost of an appeal that it otherwise would not have to incur by appealing the injunction is unavailing. D. Pet. at. 11. The plaintiff had already appealed the case. No additional cost would have been incurred by defendant in appealing the case, since it already had been appealed. The reality is that the injunction was due to be entered as a result of the plaintiff's efforts and no real defense to its entry could be made.

IV. THE ELEVENTH CIRCUIT OPINION IS CONSISTENT WITH THE HOLDING IN *FARRAR*

Farrar v. Hobby, 61 USLW 4033 (1992) does not affect the holding of the Court of Appeals. First, under the clear holding in *Farrar* a plaintiff prevails on the merits when the relief he obtains changes the legal relationship between them in a way that directly benefits the plaintiff. Here, it is the injunction to aggressively eliminate the racially hostile environment which the defendant denied existed. *Farrar* recognized that once there has been the alteration of the relationship, the degree of success goes to the reasonableness of the fee to be awarded. *Id.* at 4036 citing *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1937, 76 L.Ed.2d 40 (1983). That part has been remanded for the district court to determine. The Court of Appeals holding is consistent with *Farrar* and does not require the review of this Court.

Second, the Court of Appeals anticipated the holding of *Farrar* and stated that this case is different from cases involving nominal damages, because the injunction materially altered the relationship between Ruffin and Great Dane in a way that an award of nominal damages does not. *Id.* at 994 n. 3. Great Dane was subject to a contempt proceeding if the racially hostile environment was not eradicated. *Farrar* stated that there is a material alternation of the legal relationship between the parties when the plaintiff becomes entitled to enforce a judgment, consent decree or settlement against the defendant. *Farrar*, USLW at 4036. Having accomplished that, the plaintiff here was a prevailing party. *Id.*

Assuming that *Farrar* is read in the manner the Justice O'Conner seems to indicate by considering the degree of success with prevailing party status, the Eleventh Circuit's holding is still consistent. The case still has to be considered in by the district

court in awarding reasonable fees considering the degree of success under *Hensley*. This case also is factually distinguishable in three ways. *Farrar v. Hobby* was: (1) A suit purely for money damages ($17 million to remedy the taking of property when a school was closed); (2) Resulted in an award only of nominal damages of one dollar when $17 million had been sought (against one of six defendants); and (3) Served no discernable public purpose. In the current case, on the other hand it: (1) Was a suit for injunctive and declaratory relief; (2) Did result in declaratory and injunctive relief against a racially hostile work environment; and (3) Served a public purpose, both by affecting the plaintiff in his work environment and others working there too, by requiring the defendant to be more aggressive in eradicating the racially hostile environment.

V. A PUBLIC PURPOSE IS SERVED BY ENJOINING RACIAL HARASSMENT

Serving the public purpose is accomplished by obtaing an injunction in racial harassment claims where typically there is no monetary loss that would support an award of back-pay and there is never any compensatory or punitive damages allowed. *See, Bundy v. Jackson, supra,* 641 F.2d at 946 n.12. This Court and Courts of Appeal have held that these claims are actionable under Title VII even absent any economic loss. *Meritor Savings Bank v. Vinson,* 417 U.S. 57, 106 S.Ct. 2399, 2404-05, 91 L.Ed. 49 (1986), *Henson v. City of Dundee, supra.* If, however, fees and expenses are not awardable without a monetary recovery, then there can rarely, if ever, be a fee and expenses award, because rarely is there a monetary award in a racial or sexual harassment case. Like all other Title VII claims, racial and sexual harassment cannot be challenged in the courts without fee awards, because the victims of racial and sexual harassment will be unable to attract counsel to undertake them without such awards. Under the defendant's approach, the victims of a hostile work environ-

ment will simply not have access to the courts unless they gain a monetary verdict. *See, Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1937, 76 L.Ed.2d 40 (1983) ("The purpose of § 1988 is to ensure 'effective access to the judicial process' for persons with civil rights grievances".). *See also, Ross v. Double Diamond, Inc.*, 672 F. Supp. 261, 278 (N.D. Tex.) ("The legislative history specifically recognizes that many plaintiffs in civil rights cases have little or no money. In recognition of this fact, the legislative history goes on to state that if a private citizen successfully brings suit and forces one to cease violating the civil rights laws, then the citizen should be able to recover the costs to vindicate civil rights. The legislative history then goes on to make it clear that the purpose of allowing a successful plaintiff to recover reasonable attorney's fees is to create 'private attorney generals' who will vigorously enforce the civil rights laws".). To deny Mr. Ruffin fees and expenses is to further victimize him by having him bear the cost of having his employer declared to have violated Title VII by having a racially hostile environment and having it enjoined. Congress did not intend such a result. *City of Riverside v. Rivera*, 477 U.S. 561, 574, 106 S.Ct. 2686, 2694, 91 L.Ed.2d 466 (1986). "Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued in monetary terms". *Id.* [citing *Carey v. Piphus, 435 U.S. at 266, 98 S.Ct. at 1053-55].* This Court reminded us again that "Congress has determined that 'the public as a whole has an interest in the vindication of the rights conferred by the statutes over and above the value of a civil rights remedy to a particular plaintiff" and "[r]egardless of the form of relief he actually obtains, a successful civil rights plaintiff often secures important social benefits that are not reflected in nominal or relatively small damage awards". *Id.* 477 U.S. at 574-575, 106 S.Ct. at 2694 [quoting in part from *Hensley v. Eckerhart*, 461 U.S. 424, 444 n.4, 103 S.Ct. 1933, 1945 n.4, 76 L.Ed.2d 40 (1983)].

The distinction between this case and *Farrar* is that in *Farrar* no public purpose was accomplished. "Given that Jospeh Farrar got **some** of what he wanted - one seventeen millionth, to be precise - his success might be considered material **if it also accomplished some public goal** other than occupying the time and energy of counsel, court, and client." *Farrar, supra* at 4038 (O'Conner concurring)(emphasis supplied). No such public goal was present in *Farrar*. Here, to the contrary a public purpose was accomplished by obtaining the injunction which required more aggressive action to eradicate a racially hostile environment which black employees had been forced to endure. The prophylactic primary objective of Title VII to remove barriers in employment was accomplished in this case. No such purpose was accomplished in *Farrar*.

The defendant attempts to claim that there has not been a material alteration of the legal relationship of the parties. This is not true. Defendant had claimed that Mr. Ruffin had not been subjected to a racially hostile work environment. Mr. Ruffin had been subjected to a hangman's noose being placed around his neck and was subjected to numerous racial slurs, jokes, and epithets. The evidence also established that other black employees had also been subjected to slurs and epithets. The Court held Mr. Ruffin had been subjected to a racially hostile work environment. Defendant had contended that it had taken sufficient action in response to racial slurs, jokes and other actions. The Court held it had not. Pursuant to the Court's injunction any further complaints had to be viewed in a completely different light (much more seriously by the defendant) and the defendant had to be more aggressive in eradicating the racially hostile environment. If it did not, Mr. Ruffin had an enforceable order which he could enforce by contempt proceedings.

If injunctive relief were not necessary to alter the defendant's conduct, it would not have been entered below. Where there is

"no reasonable probability of further noncompliance with the law", an injunction is not entered. *James v. Stockham Valves & Fittings Co.*, 559 F.2d 310, 354 (5th Cir. 1977), *cert. denied*, 434 U.S. 1034 (1978). The trial court in the current case specifically found that the defendant had not taken sufficient voluntary action to correct the racially hostile work environment and that an injunction was necessary to provide a "sufficiently racially neutral environment for Mr. Ruffin and other blacks to perform their work in". Tr. 413. The Court below held that the defendant must "be more affirmative and more aggressive in its efforts to correct that environment in the shop". Tr. 414. Defendant did not challenge the entry of the injunction. If there had in reality been no basis for its entry, all that would have been required would have been to cross appeal its entry after plaintiff appealed the denial of expenses and fees. Defendant did not do so, because the record fully supported the necessity of entering the injunction. Thus, the argument that the injunction had minimal significance particularly when it had not been challenged by the defendant was untenable. To so hold would have stripped the meaning of the district court's determination that there was a racially hostile environment and the defendant was required to aggressively eradicate it. *Ruffin*, 969 F.2d at 995.

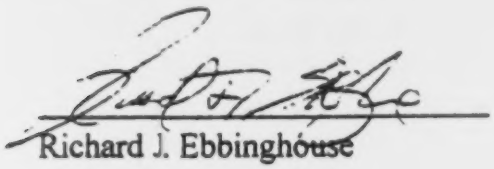
Defendant tries to analogize this case to others. Pet. at 20-22. None of those involved a racially hostile work environment, obtaining an injunction, or any significant relief as a result of the litigation. None of them serve to overrule *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402, 88 S.Ct. 964, 965 (1968). An examination of a few of them shows the distinction. In *Hewitt v. Helms*, 482 U.S. 755, 766, 107 S.Ct. 2672, 2675-76, 96 L.Ed.2d 654 (1987), this Court held that the plaintiff was not a prevailing party because "[n]o injunction or declaratory relief was entered in his favor" and he "obtained no relief" whatsoever. The plaintiff would have prevailed if he obtained the "equivalent" of declaratory or injunctive relief without formally gaining such relief so

long as he changed the defendant's conduct in the same way that would have resulted from an injunction or declaratory judgment. *Id.* Here, the plaintiff directly obtained an injunction and a declaratory relief. In *Slade v. United States Postal Service*, 952 F.2d 357 (10th Cir. 1991) it was held that considering his misdemeanor convictions that were job related for rejecting him on past applications was appropriate. The end result of the proceedings was the United States Postal Service could consider them. The court held that since the plaintiff had been deemed to be ineligible prior to filing the proceedings and was still ineligible for employment for the jobs for which he had applied, there had been no change in the legal relationship. *Christopher P. v. Marcus*, 915 F.2d 794 (2nd Cir. 1990), *cert. denied*, 111 S.Ct. 1081 (1991) cited by defendant held that no final order favorable to the plaintiff's had been entered, so no fees were due to be awarded. None of the cases cited by the defendant can stand on the same footing to the instant case that declared that a racially hostile work environment exists and requires the defendant to eradicate it.

CONCLUSION

Consistent with both *Garland* and *Farrar*, the plaintiff by obtaining the declaratory judgment and injunction enjoining the defendant was a prevailing party under 42 U.S.C. § 1988. The case is set for a hearing on the fees in light of the plaintiff's prevailing party status. The amount has yet to be determined. The remedial purposes of Title VII and the public purpose were advanced by enjoining the defendant and requiring the eradication of racially motivated actions of its employees such as the use of hangman's nooses, racial slurs, and epithets. The proceedings in this case are consistent with this Court's holdings. Certiorari is due to be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing has been served by placing a copy of same in the United States Mail, postage pre-paid and addressed as follows:

James B. Spears, Jr.
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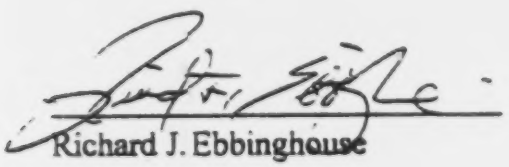
DATED this 13th day of January, 1993.



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